

CC Docket Nos.: 96-45
98-171
97-121

ATTACHMENTS TO:

Alliance Group Services, Inc.'s Comments in Support of Reconsideration or Review of The FCC's Form 499-A Order

Attachment A: Alliance Appeal of USAC Decision, 10/30/2001 (*w/o confidential and proprietary materials*)

Attachment B: Alliance Request for Review and Submission of Supplemental Information, 1/10/2005

ATTACHMENT A

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(1926 - 1992)

October 29, 2001

Via Federal Express
Federal Communications Commission
9300 East Hampton Drive
Capitol Heights, MD 20743

90-45-
97-21

Dear Sir/Madam:

Enclosed for filing is our original Petition for Review filed on behalf of Alliance Group Services, Inc. I have enclosed an additional four copies of the Petition, together with Exhibits and a Certificate of Service. Please contact the undersigned with any questions.

Yours truly,

EARLY, LENNON,
CROCKER & BARTOSIEWICZ, P.L.C.



Lawrence M. Brenton

tjr
Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
)
) Docket Nos. 96-45 and 97-21
Request for Review by)
Alliance Group Services, Inc., of Decision)
of Universal Service Administrator)

To: The Commission

PETITION FOR REVIEW

ALLIANCE GROUP SERVICES, INC.

David G. Crocker
Lawrence M. Brenton

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Its Counsel

October 29, 2001

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SUMMARY

Alliance Group Services, Inc. ("Alliance Group") seeks review of a Decision of the Universal Service Administrator issued October 1, 2001. The Administrator has taken the following actions to which Alliance Group objects and petitions for review:

A. Refused to accept Alliance Group's year 2000 FCC form 499-A, thereby refusing to assess universal support mechanism charges to Alliance Group based on Alliance Group's actual 1999 end user revenues as required by law;

B. Accepted for filing U. S. Republic Communications, Inc.'s year 2000 FCC form 499 filings, whether filed timely or not, reporting U. S. Republic's 1999 end user revenue and, at U.S. Republic's request;

C. Transferred and reallocated to Alliance Group all universal support mechanism charges arising from U.S. Republic's 1999 end user revenues.

Alliance Group maintains that the above actions were mistaken, unlawful, arbitrary, unreasonable, done in violation of Alliance Group's rights to due process and were entirely outside the authority delegated to the Administrator's staff or Board.

Through oversight, Alliance Group did not file its own year 2000 FCC form 499-A, reporting its 1999 end user revenues by April 1, 2000. It attempted to make such a filing in April 2001. This filing was rejected by the Administrator for the stated reason that it had been submitted more than one year after the date of the original filing. As there had not been an original filing, Alliance Group submitted a Letter of Appeal and a 499-A form identified as an original filing. This 499-A has now been rejected on the basis that the Administrator can refuse to accept a revised filing more than one year after the original filing or more than one year after the date when the original filing was due.

The Administrator does not have the authority to choose to reject an original 499-A filing. It can cause an audit or investigate the filing if it does not believe or agree with the numbers reported but it does not have the unbridled authority to reject filings as it has done in this case, to choose to accept a 499-A filing submitted by a different carrier, and decide to allocate all the resulting universal service support mechanism charges to Alliance Group. The Administrator assessed charges based on its interpretation of the terms of an asset purchase agreement between U. S. Republic and Alliance Group. The Administrator does not have the authority to interpret and construe purchase agreements, without factual investigation, at the staff level, in secrecy, and without notice or an opportunity to be heard.

The rejected 499-A filing by Alliance Group reported Alliance Group's revenues for 1999 in the amount of \$427,463.00. The resulting universal service support mechanism charges are owed in any case. However, the Administrator prefers to accept the 499-A form filed by U. S. Republic disclosing U. S. Republic's 1999 revenues of more than \$13,000,000.00 which, taken together with the Administrator's construction of the contract between the parties, results in charges of \$763,717.56 to Alliance Group. The reallocation of charges from U. S. Republic to Alliance Group occurred in secrecy, sometime in June or July of the year 2000, through means unknown to Alliance Group. After some type of communication with sources other than Alliance Group and review of the purchase agreement, the Administrator issued a series of new and confusing charges and credits to Alliance Group which initially, in September of 2000, made it appear that Alliance Group owed virtually nothing. Through additional accelerated charges over the last three months of the year 2000 and later revocation of credits, the amount charged to Alliance Group over the last four months of the year 2000 became \$763,717.56. Alliance Group protests these actions, asks that its year 2000 499-A be accepted for filing and that the charges wrongly allocated to it by the Administrator and related late charges be reversed.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
) Docket Nos. 96-45 and 97-21
Request for Review by)
Alliance Group Services, Inc., of Decision)
of Universal Service Administrator)

To: The Commission

PETITION FOR REVIEW

Alliance Group Services, Inc. ("Alliance Group"), by its counsel, hereby requests that the Commission review *de novo* the attached Decision (Exhibit D) of the Universal Service Administrative Company ("USAC") pursuant to 47 C.F.R. § 54.719 and 47 C.F.R. §54.723.

I.

INTRODUCTION

Alliance Group seeks review of the Decision of the Administrator, USAC, which a) rejects and refuses to accept for filing Alliance Group's year 2000 FCC Form 499-A; b) adopts, by means of construction and interpretation of a Purchase and Sale Agreement U. S. Republic's ex-parte request or instruction to charge all universal service support mechanism charges based on U. S. Republic's 1999 revenues to Alliance Group; and c) imposes a completely unexplained and erroneous series of universal service support mechanism charges upon Alliance Group by means of late, confusing and conflicting invoices, temporary credits and other as yet unaccounted for and unexplainable adjustments and account transactions.

II.

SUMMARY OF FACTS AND ARGUMENT

Alliance Group Services, Inc. ("Alliance Group") is a telecommunications carrier providing interexchange services in numerous states. Because it conducted operations in 1999 generating interstate end user telecommunications revenues, it should have filed a year 2000 FCC Form 499-A in April of 2000. Due to clerical error, Alliance Group filed its first 499 Form (FCC Form 499-S) in September of 2000. It attempted to file its 2000 FCC Form 499-A on April 13, 2001. This Form was identified at line 609 as a "Revised filing". A copy of this Form 499-A is attached as Exhibit A.

By letter dated June 7, 2001, the Universal Service Administrative Company (the "Administrator") rejected the Form 499-A, stating in relevant part that "We are unable to accept the revision because it was not filed within one year of the original submission". The June 7, 2001 letter from the Administrator is attached as Exhibit B.

On July 2, 2001, Alliance Group submitted its Letter of Appeal to the Administrator. A copy of the letter of appeal with attachments is attached as Exhibit C. In its Letter of Appeal, Alliance Group submitted that its 2000 Form 499-A report should be accepted for filing notwithstanding the fact that it was late filed. As Alliance Group had not initially filed a 2000 Form 499-A, the Letter of Appeal also included an additional, original 2000 Form 499-A identified "Original filing" and containing the same information as the previously rejected filing.

The Letter of Appeal also spoke to the fact that the Administrator was, evidently, using its arbitrary rejection of Alliance Group's 2000 Form 499-A as the pretext for mistakenly and unjustifiably invoicing Alliance Group for grossly overstated universal service support mechanism charges. As discussed below, these charges were calculated and reallocated to Alliance Group by a process never explained by the Administrator. They obviously derive from reported 1999 revenues

associated with U. S. Republic Communications, Inc. ("U. S. Republic"), a Texas Corporation wholly owned by Vartec Telecom Holding Company, a Delaware Corporation.

In response to the Letter of Appeal, the Administrator on October 1, 2001 issued its "Administrator's Decision on Contributor Appeal", attached as Exhibit D. On the question of its willingness to accept for filing any Alliance Group 2000 FCC Form 499-A, the Administrator now invoked the apparently unwritten rule that a filing will not be accepted if submitted more than one year after the date of the initial filing or the date when the initial filing was due. This decision, apparently unsupported by any authority beyond the Administrator's own arbitrary preferences, would forever preclude Alliance Group or other contributors from filing a 499-A report of 1999 interstate end user telecommunications revenues after April 1, 2000, whether an initial filing was made or not. (Such a rule, if it existed, would prevent a contributor from ever filing a revision reporting increased 1999 end user revenues or newly reporting revenues. It seems extremely doubtful that the Administrator would, in fact, be compelled by rule to refuse to accept any such late filing. If there were in fact such a rule, no contributor would even be able to supplement its previous filing with increased numbers and pay the resulting additional contributions).

The Administrator has exceeded its authority by arbitrarily rejecting Alliance Group's year 2000 499-A, by electing to adopt U. S. Republic's 2000 499-A and by adopting or applying unadopted rules to interpret and construe a purchase and sale Agreement between private parties. The Administrator is not authorized to engage in rule making or interpretation of the type done here. 47 C.F.R. §54.702(C).

In the Decision (Exhibit D), the Administrator states that, in fact, Universal Service Support Mechanism charges to Alliance Group in year 2000 were "based on U. S. Republic's FCC Form 499-A submitted in September 2000". The Administrator has declined to provide Alliance Group with

a copy of U. S. Republic's September 2000 Form 499-A or other information. Obviously if filed in September of 2000, the 499 report the Administrator chose to accept was filed well past the due date. Nevertheless, the Administrator has mistakenly chosen to adopt U. S. Republic's report and transfer all resulting charges to Alliance Group.

Alliance Group acquired some but not all assets of U. S. Republic under a Purchase and Sale Agreement dated December 23, 1999 (Exhibit E). As Alliance Group pointed out in its Letter of Appeal dated July 2, 2001, U. S. Republic continued in existence until at least March 22, 2001. (Exhibit F). On information and belief, U. S. Republic continued in operation after completion of its transaction with Alliance Group at least throughout calendar year 2000 and continued to serve a portion of the customer base that had generated 1999 revenues. The Administrator billed U. S. Republic on a monthly basis for Universal Service Support Mechanism charges until June of 2000 and was paid in whole or in part. (Exhibit H). As shown by the June invoice to U. S. Republic, these charges from the Administrator were paid by U. S. Republic until June. The Administrator has declined to furnish any of this information to Alliance Group, taking the position that all the account information of U. S. Republic is confidential.

In August of 2000, U. S. Republic sent Alliance Group invoices and a demand that it be reimbursed for some payment. (Exhibit G). Through means unknown to Alliance Group, U. S. Republic apparently also persuaded staff at the Administrator to issue credits for all year 2000 invoices to the U. S. Republic account and to charge Alliance Group, over the last four months of calendar year 2000, over \$763,717.56 in universal service support mechanism charges, late charges and other charges. (Exhibit H).

This reallocation of charges from U. S. Republic to Alliance Group occurred virtually without the participation of Alliance Group and, it appears, by means of ex-parte communications by U. S.

Republic to the Administrator. Lori Terraciano of USAC has stated to counsel for the Alliance Group that she reviewed the Purchase and Sale Agreement of December 23, 1999, that it was her interpretation of the Purchase and Sale Agreement that invoices issued in calendar year 2000 were to be paid by Alliance Group and that if the terms of the Purchase and Sale Agreement had been drafted differently, she might have reached the opposite conclusion. (Exhibit J). When asked by what authority staff was reviewing the Purchase and Sale Agreement and making such determinations in virtual secrecy, staff furnished Alliance Group's counsel with a copy of a staff proposal which it represented had been circulated and approved at a meeting of the Board of Directors of the Administrator in January 2000. A copy of this staff paper and the minutes of the relevant Board meeting are attached as Exhibit I. Whether the staff proposal was, in fact, identical to one circulated at the Administrator's Board meeting is doubtful and whether the Board has the authority to adopt such general rules is extremely doubtful. As described in the Declaration of Alliance Group's counsel filed herewith (Exhibit J), the actual minutes of the Board meeting do not specifically incorporate staff's recommended guidelines.

This decision was implemented by the Administrator issuing an extremely confusing series of credits and charges starting in July of 2000. It appeared from the combination of credits and charges in September that Alliance Group's liability was virtually zero but by loading in accelerated charges over the last four months of the year 2000 and by taking away credits, the net result was the imposition of \$763,717.56 in charges to Alliance Group, together with substantial late payment penalties.

The Board does not have authority to adopt such rules and policies. It does not appear that the Board itself actually participated in any part of this process and instead, staff has undertaken to take all of the described actions. Certainly, staff does not have authority to secretly construe agreements

and adjust accounts. If either staff or the Board had authority to take these actions, neither would be entitled to do so in secrecy.

The Purchase and Sale Agreement of December 23, 1999 in fact does not provide that invoices during calendar year 2000 based on U. S. Republic's 1999 revenues were to be paid by Alliance Group. (In its letter, Exhibit G, U. S. Republic's parent asserted to Alliance Group that the December 1999 invoice and all subsequent invoices which it had been receiving for a number of months were payable by Alliance Group). In fact, the December, 1999 invoice to U. S. Republic was based on U. S. Republic's year 1999 499-A filed the previous April. USAC invoices during the first half of calendar year 2000 were based on U. S. Republic's 499-S presumably filed in September of 1999 and reporting U. S. Republic revenues for the first six months of 1999. USAC invoices to U. S. Republic for all of calendar year 2000 would have been based on U. S. Republic's year 2000 499-A, reporting revenues for calendar year 1999.

Alliance Group did not, in fact, generate or receive any interstate or international end user telecommunications revenues in respect of any part of the U. S. Republic customer base in 1999. U. S. Republic should have (and probably did) file its 499-A in April of 2000, completing its report of its end user revenues in 1999, which then generated USAC invoice billings during calendar year 2000 to U. S. Republic.

If, as claimed by U. S. Republic in Exhibit G, Alliance Group was to pay USAC invoices received by U. S. Republic in December 1999 and thereafter, the Purchase and Sale Agreement could have plainly said so. Had Alliance Group generated end user revenues in 1999 in respect of U. S. Republic customers, which it did not, Alliance Group might have been obligated to pay a fraction of U. S. Republic's USAC invoices in calendar year 2000. Alliance Group did not generate any end user revenues from the former U. S. Republic customer base until calendar year 2000 which it duly

reported on its 499-S in September of 2000 and which, under the practice at that time, resulted in USAC invoices in the first half of calendar year 2001. (The procedure has now changed so that the September 2000 499-S resulted in USAC invoices during the first quarter of 2001. The 2001 499-A resulted in invoices during the second quarter of 2001 and subsequent quarterly 499 reports result in monthly USAC invoices for quarterly periods).

III.

CONCLUSION

On de novo review, Petitioner requests that the Commission direct the Administrator to accept Alliance Group's year 2000 499-A for filing. Petitioner requests that the Administrator be directed to reverse and credit the charges including late charges and penalties assessed against Alliance Group based on U. S. Republic's 2000 499-A filing or other filings and the Administrator's interpretation of the purchase and sale agreement between U. S. Republic and Alliance Group.

Respectfully submitted,

ALLIANCE GROUP SERVICES, INC.

By: _____


David G. Crocker

Lawrence M. Brenton

EARLY, LENNON,
CROCKER & BARTOSIEWICZ, P.L.C.
900 Comerica Building
Kalamazoo, Michigan 49007
(616) 381-8844

Its Counsel

October 29, 2001

CERTIFICATE OF SERVICE

I, Teresa J. Rayman, hereby certify that the foregoing "Petition for Review" was served this 29th day of October, 2001, by depositing a true copy thereof with the United States Postal Service, first class postage prepaid, addressed to:

D. Scott Barash, Esq.
Vice President & General Counsel
Universal Service Administrative Company
Suite 600
2120 L Street, NW
Washington, D.C. 20037



Teresa J. Rayman

LIST OF EXHIBITS

- Exhibit A** - Alliance Group's 2000 FCC Form 499-A
- Exhibit B** - Administrator's Letter - June 7, 2001
- Exhibit C** - Alliance Group's Letter of Appeal - July 2, 2001
- Exhibit D** - Administrator's Decision on Contributor Appeal - October 1, 2001
- Exhibit E** - Purchase and Sale Agreement - December 23, 1999
- Exhibit F** - U. S. Republic Corporate Records
- Exhibit G** - VarTec Letter of August 28, 2001 with enclosures
- Exhibit H** - USAC Invoices
- Exhibit I** - USAC staff recommendations/Board action - January 25, 2000
- Exhibit J** - Declaration of Lawrence M. Brenton
- Exhibit K** - Declaration of Michael W. Mallon

ATTACHMENT B

KELLEY DRYE & WARREN LLP

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January 10, 2005

VIA HAND DELIVERY

ATTN: Form 499-A Revision Order

Jeffrey A. Mitchell, Esq.
Associate General Counsel
Universal Service Administrative Company
2000 L Street, N.W., Suite 200
Washington D.C. 20036

**Re: Form 499-A Revision Order; In the Matter of a Request for Review By
Alliance Group Services of A Decision of the Universal Service
Administrator; CC Docket No. 96-45, CC Docket No. 97-21**

**Request for Further Review, and Submission of Supplemental
Information**

Dear Mr. Mitchell:

On behalf of Alliance Group Services, Inc. ("Alliance" or "the Company"), we hereby submit supplemental information to the Universal Service Administrative Company ("USAC") pursuant to an Order of the Federal Communications Commission ("FCC" or "Commission") released on December 9, 2004 (the "499 Revision Order").¹

This submission is made in further support of Alliance's Appeal of the decision of USAC regarding a revised 499-A filing ("*Appeal*"). As is summarized herein, Alliance believes that the central issue in its *Appeal* is not simply whether good cause exists for USAC to accept its

¹ *In the Matter of Federal-State Joint Board on Universal Service, 1998 Biennial Regulatory Review, Changes to the Board of Directors of the National Exchange Carrier Associations, Inc.*, CC Docket Nos. 96-45, 98-171, 97-21, DA 04-3669 (*rel.* December 9, 2004) ("*499 Revision Order*").

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Jeffrey A. Mitchell, Esq.
January 10, 2005
Page Two

revised filing beyond the one-year revision deadline, although the facts in the Company's pending Appeal illustrate the necessary good cause.

Rather, the central issue of Alliance's *Appeal* is whether as the purchaser of assets of another carrier, Alliance should be held liable for the universal service obligations of a seller company, when the seller continues to operate and the asset purchase agreement between the companies does not provide for the assumption of such liabilities. Alliance disagrees strenuously with USAC's interpretation that Alliance is liable for the revenue obligations of US Republic Communications, Inc. ("US Republic"). At bottom, Alliance believes that the nature of its Appeal is best resolved by addressing this issue squarely, whether before USAC or the FCC.

I. THE 499 REVISION ORDER REQUIRES USAC TO REVIEW REQUESTS TO ACCEPT AMENDED FORM 499-As

The Commission released its *Order* concerning a modification in the deadline for filing revisions to the Telecommunications Worksheet ("Form 499-A") on December 9, 2004 and it becomes effective on January 11, 2005. The *Order* expressly considered the USAC practice of rejecting Form 499-As not submitted within one year of the due date of the original filing, if the revision would decrease regulatory fees or contributions to the Universal Service Fund ("USF").

The Commission decided to uphold the general USAC practice by adopting the one-year filing deadline on a prospective basis, applying a strict filing requirement to all 499 filings made after the effective date of the *Order*. The Commission, nevertheless, acknowledged numerous pending petitions for review of USAC's policy which were filed before the issuance of the *499-A Revision Order*.

With regard to the pending requests, the *Order* instructs USAC to review these pending petitions, and to consider any new information filed up through the effective date of the *Order*. Specifically, the *Order* announces that the Commission will "remand these requests to USAC and direct USAC to revise universal service contribution obligations as appropriate provided that (1) the Petitioner has demonstrated good cause for submitting the revision beyond the one-year revision window; and (2) the Petitioner has provided an explanation of the cause for the change along with complete documentation showing how the revised figures derive from corporate financial records."

Finally, the *Order* requires USAC to give consideration to the pending petitions in strict compliance with the limited remand described by the Commission. The *Order* notes that to the extent a petition raises issues other than the acceptance of the revision of a 499-A, the Commission retains these issues for disposition at another time by the Wireline Competition

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Jeffrey A. Mitchell, Esq.
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Bureau or the Commission. In this case, one such is the issue of whether Alliance must contribute certain funds to the USF if another carrier collected and subsequently remitted those same funds to the USF.

In the *499 Revision Order*, the Commission “grant[ed] the pending requests for review” and directed USAC “to consider if there was good cause to allow revisions” of Alliance’s 499 forms beyond the one-year deadline.² In so stating, the Commission directed USAC to consider fully the substantive arguments and evidence submitted by carriers petitioning for acceptance of their revised forms.

Thus, pursuant to the *499-A Revision Order*, we submit this further request for review by USAC and if necessary, by the Commission at some later date. As is discussed in detail in the following section, on October 30, 2001, Alliance submitted to the Commission and USAC, a request for review of USAC’s decision rejecting a 499 submitted by Alliance for the reporting year 2000 (for revenues generated in 1999).³ By this supplemental submission, Alliance reiterates and incorporates by reference the critical points of information contained in the Company’s initial *Appeal*, and appends a copy of the Appeal to this filing as *Attachment A*.

The information in the initial petition, standing alone, provides justification for USAC to accept Alliance’s revised 499-A. Nonetheless, as the Commission offered in the *499-A Revision Order*, Alliance also submits a new point of information for consideration of its request to accept the revised 499s-As. Taken together, these submissions present a compelling case for granting Alliance’s request to accept the revised filings.

II. THE PROCEDURAL ISSUE IN DISPUTE: WHETHER USAC SHOULD ACCEPT ALLIANCE’S REVISED 499-A FOR 2000

The specific circumstances of Alliance’s corporate history, and its prior communications with USAC are outlined in the pending *Appeal*. Nevertheless, it is important to consider the chronology of events regarding Alliance’s purchase of assets from US Republic and the history of its filing efforts before USAC.

² See *499 Revision Order* at ¶ 13.

³ Appeal of Decision of the Universal Service Administrative Company Concerning Alliance Revision to Form 499-A, filed October 30, 2001 (“*Alliance Appeal*” or “*Appeal*”). Alliance filed its 2000 Form 499-A in April of 2001.

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Jeffrey A. Mitchell, Esq.
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Background and Acquisition History of Alliance

Alliance and US Republic, a subsidiary of VarTec Telecom Holding Company ("VarTec"), entered into an Asset Purchase Agreement ("Agreement") on December 23, 1999 ("Transfer Date"). Among other things, the Agreement provided that the sale of assets occurred on December 23, 1999. As described in the Agreement, the assets at issue consisted of the long distance customer base of US Republic, as well as associated vendor agreements and trade names. As is further described in the *Appeal*, the Agreement involved solely the sale of US Republic's customer list and did not include actual stock, facilities, or equipment.

Of particular importance are the terms of the Agreement with regard to regulatory fees. With respect to USF charges, the Agreement specifies only that Alliance is to reimburse US Republic for USF fees and charges relating to the December 1999 billing cycle. The Agreement states further that US Republic has complied with FCC laws and will remain responsible for any acts, actions or violations of such laws involving the long distance customer assets that arose prior to the transfer date. The Agreement assumes that US Republic will continue to exist, as it obligates both US Republic and VarTec not to knowingly solicit, or "winback" those customers identified in the customer list sold to Alliance for a three (3) year period following the closing of the sale.⁴

Alliance's "Revised" Filing Efforts

On March 31, 2000, VarTec filed a 2000 Form 499A on behalf of US Republic, its subsidiary and selling party to the Asset Purchase Agreement. The 2000 Form 499A for US Republic reported US Republic's 1999 USF contribution base (e.g. interstate and international end user) revenues as \$ 13,597,124.00 for 1999. USAC considers this filing to serve as the "original" filing attributable to Alliance's revenue base.

Subsequently, Alliance filed a 2000 Form 499A (for its 1999 revenues) in April 2001, which USAC rejected for being submitted more than one year after the due date of the "original" Form. This filing included Alliance's end user revenues in 1999 and did not include any revenues associated with the acquisition of US Republic's long distance customer base. USAC considers this April 2001 filing to be a "revised" filing for Alliance's revenues. This filing reports Alliance 1999 USF contribution base revenues as \$ 427,463.00. Thus, the

⁴ As explained in Alliance's Appeal to the Commission, US Republic continued to operate through and, based on available records, perhaps into 2001. As submitted in the Appeal, evidence from the Texas Secretary of State illustrates that US Republic did not dissolve itself in Texas until March 22, 2001; see Exhibit E to *Appeal*.

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Jeffrey A. Mitchell, Esq.
January 10, 2005
Page Five

difference between US Republic's 1999 reported revenues (\$13,597,124.00) and Alliance's 1999 reported revenues (\$427,463.00) is \$13,169,661.00.

USAC billed Alliance for USF obligations, beginning on September 22, 2000, based upon the 2000 Form 499A revenues reported by VarTec on behalf of its subsidiary, U.S. Republic. Thereafter, on October 22, November 22 and December 22, 2000, USAC billed Alliance for the remainder of what would have been US Republic's USF obligation based on that company's 1999 revenues (as reported in the April 2000 499A), a total of approximately \$763,717.56.

Most important, however, is the basis by which USAC made this change in its invoicing to Alliance. As determined in subsequent communications with USAC staff, USAC adheres to a theory that Alliance, as the purchaser of US Republic's revenues in 1999, bears the responsibility to report and to contribute to the USF based upon all revenues – its own and US Republic's – for 1999. Alliance disagrees strongly with USAC's interpretation of its legal and regulatory obligations.

III. THE TRUE UNDERLYING ISSUE FOR REVIEW: WHETHER ALLIANCE WILL BE HELD LIABLE FOR REGULATORY OBLIGATIONS OF AN UNAFFILIATED SELLER CARRIER

As described in the pending Appeal, the content of Alliance's prior submission provides USAC with adequate information to compel USAC to accept the late-filed 2000 499-A filing. Alliance hereby incorporates, by reference, its Appeal filing and includes it here as *Attachment A*. Of more critical importance, however, is the underlying legal issue described earlier: Namely, whether USAC has the authority to hold liable the purchaser of assets of another carrier, when the seller company continues to operate and the asset purchase agreement between the companies does not provide for the assumption of the regulatory obligations. Alliance believes this issue may be best addressed by the Commission rather than USAC.

It is Alliance's position that any universal service assessments upon Alliance that are based upon services provided and billed by US Republic prior to the sale date, are in fact, pre-Transfer Date obligations for which Alliance is not liable under the terms of the Agreement and applicable law.

Given USAC's rejection of Alliance's Appeal, and the Commission's request for new, supplemental information, Alliance hereby requests that either USAC or the Commission: (1) acknowledge that a telecommunications provider's obligation to contribute to the USF arises

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Jeffrey A. Mitchell, Esq.
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at such time as it begins to provide interstate telecommunications services and bills for such services; and (2) determine that the USF assessments attributable to a purchaser of telecommunications assets are governed by the relevant asset purchase agreement, and not by USAC's desire to hold any carrier liable for another carrier's USF obligations.

USAC has no statutory basis for its interpretation – in fact, it cites to no statute, Commission rule, policy or order in its denial of Alliance's *Appeal*. Finding no legal authority supportive of its position, USAC has chosen to create its own policy by concluding that obligations to contribute to the USF arise when USAC calculates the amount of contribution to be invoiced. However, USAC's enabling statutes do not permit it to make such policy formulations. USAC's role is strictly confined to program administration of the USF. The FCC and the Federal-State Joint Board retain full authority and control over the USF programs, and are the exclusive entities authorized to establish USF-related policy.

Alliance notes that USAC's adoption of these policies and practices have never been subject to rulemaking and comment under the Administrative Procedure Act, nor is there basis for USAC's activities in law or policy. We also note that such action represents an unconstitutional taking under the 5th Amendment of the Constitution. At bottom, to uphold USAC's stated position is to render multiple private contractual agreements invalid and impose unreasonable regulatory obligations on all telecommunications companies.

* * * * *

V. CONCLUSION

In closing, Alliance has demonstrated good cause for its filing of late-filed 499-A form for 2000. The Information provided in Alliance's earlier Appeal, and the supplemental information provided herein, show conclusively that failure to accept Alliance's revised filing for 2000 would lead to a gross overstatement of Alliance's USF obligations. USAC's failure to accept Alliance's May 2004 filings would result in a considerable overpayment to the USF.

We respectfully request that USAC consider all the information submitted by Alliance, including information submitted to it during Alliance's voluntary offering of a payment plan proposal to USAC in the latter half of 2004; conclude that this information provides adequate grounds for revising the filing of 2000; and accept the late-filed form that Alliance submitted for that reporting year.

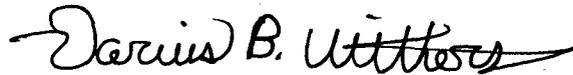
If USAC rejects Alliance's *Appeal* on these grounds, however, we request that USAC refer this matter to the Commission for consideration of an issue of greater import. Namely, whether USAC's *ad hoc* policy to hold purchasers liable for the regulatory obligations

KELLEY DRYE & WARREN LLP

ATTN: Form 499-A Revision Order
Jeffrey A. Mitchell, Esq.
January 10, 2005
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of sellers, notwithstanding the terms of an asset purchase agreement, is supported by applicable law. If necessary, we look forward to addressing these issues fully before the Commission.

Respectfully submitted,



Brad E. Mutschelknaus
Darius B. Withers
Counsel to Alliance Broadband Corporation

Attachments (as noted)

cc: Jeffrey J. Carlisle, Chief, Wireline Competition Bureau, Federal Communications Commission
Narda Jones, Esq., Chief, Telecommunications Access Policy Division
Anita Cheng, Esq., Assistant Chief, Telecommunications Access Policy Division, Federal Communications Commission
Paul K. Cascio, Esq., Assistant General Counsel, Office of the General Counsel, Federal Communications Commission
Mr. Mark A. Carmichael, Vice-President, Finance, Universal Service Administrative Company
Mr. Michael Lawrence, Universal Service Administrative Company